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No. 80-1614

In the Supreme Court of the United States

OCTOBER TERM, 1980

GEORGE F. JEWETT, JR.
and
LUCILLE M. JEWETT,
PETITIONERS,

v.

COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

JAMES D. ST. CLAIR
JOHN G. FABIANO
TIMOTHY H. GAILEY
CHRISTOPHER T. CARLSON
HALE AND DORR
60 State Street
Boston, MA 02109

Counsel for Petitioners

WADE H. MCCREE, JR.
Solicitor General
JOHN F. MURRAY
Acting Assistant Attorney General
JONATHAN S. COHEN
KARL P. FRYZEL
Department of Justice
Washington, D.C. 20530
(202) 633-2217

Counsel for Respondent

PETITION FOR CERTIORARI FILED MARCH 25, 1981.
CERTIORARI GRANTED JUNE 1, 1981.

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The following opinions, decisions, judgments and orders have been omitted in printing this appendix because they appear on the indicated pages in the appendix to the printed Petition for Certiorari:

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UNITED STATES TAX COURT
GENERAL DOCKET

Docket No. 3877 76

GEORGE F. JEWETT, JR. AND LUCILLE M. JEWETT
Skyland Way, Ross, California 94957
PETITIONER,

v.

COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT.

Appearances for Petitioner:
Robert J. Richards, Jr. (Hale & Dorr), 60 State St., Boston, MA 02109

DOCKET ENTRIES

1976

May 5 PETITION FILED: FEE PAID May 5, 1976
May 5 REQUEST by Petr. for trial at Boston, MA filed. Granted May 5, 1976
June 28 ANSWER by Resp. filed. (C/S 6/24/76)

1977

July 18 NOTICE OF TRIAL on Oct. 25, 1977 at Boston, MA
Oct. 14 NOTICE CHANGING COURTROOM AND ADDRESS FOR TRIAL SESSION.
OCT. 25 TRIAL at Boston, MA before Judge Featherston.
Stipulation of Facts with exhibits.
ORIGINAL BRIEFS DUE: Dec. 9, 1977
REPLY BRIEFS DUE: Jan. 9, 1978
SUBMITTED TO JUDGE FEATHERSTON
Nov. 14 TRANSCRIPT of Oct. 25, 1977 received.
Dec. 9 BRIEF filed by resp.
Dec. 12 BRIEF filed by petr. (PM Timely)
Dec. 14 ORDER that this case is reassigned to Judge Raum.

1978

Jan. 9 REPLY BRIEF filed by petr.

Jan. 11 REPLY BRIEF filed by Resp.

June 13 OPINION filed Judge Raum.
(Decision will be entered under Rule 155.)

July 14 MOTION by Petr. for Reconsideration of Findings and Opinion. See Order July 19, 1978

July 14 MEMORANDUM OF LAW in Support of Petr's. motion for Reconsideration of Opinion filed.

July 19 ORDER, that the Opinion filed on June 13, 1978 is Amended in part and in all other respects it remains unchanged.

July 19 ORDER, that Petr's. motion filed Jul 14, 1978 as moves for reconsideration of Opinion by the Court is denied.

Aug. 16 AGREED COMPUTATION filed.

Aug. 17 DECISION ENTERED, Judge Raum.

APPELLATE PROCEEDINGS

Oct. 17 MOTION to fix amount of bond filed by Petitioners.

Oct. 17 ORDER fixing the amount of bond at $1,139,217.28.

Nov. 13 Surety bond in the amount of $1,139,217.28, with St. Paul Fire & Marine Insurance Company, as surety, approved and ordered filed.

Nov. 13 NOTICE OF APPEAL to U.S.C.A., Ninth Circuit, filed by Petitioners.

Nov. 14 NOTICE of Filing with copy of notice of appeal sent Mr. Stuart E. Seigel, Chief Counsel.

Nov. 14 NOTICE, to parties, of assembling and date for transmission of the record.

Nov. 22 MOTION to withdraw original exhibits 1-A thru 4-D and substitute photostatic copies therefor. Granted Nov. 27, 1978

78-3621

United States Court of Appeals
For the Ninth Circuit

No. 3877-76
Notice of Appeal filed Nov. 13, 1978

GEORGE F. JEWETT, JR. AND LUCILLE M. JEWETT,
PETITIONERS/APPELLANTS,
v.
COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT/APPELLEE.

For Appellant:
Christopher T. Carlson, Esq.
Robert J. Richards, Jr., Esq.
Hale & Dorr
For Appellee:
Stuart E. Seigel, Chief Counsel
M. Carr Ferguson, Asst. Attorney General

CIVIL TAX
From Tax Court, Northern, Calif.

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DOCKET ENTRIES

1978
Dec. 12 DOCKET FEE PAID. nw
Dec. 13 DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. nw
Dec. 19 FILED CERT. ADMIN. RECORD ON APPEAL IN ONE VOLUME OF PLDGS, VOL. I. ORIG. ONLY. ONE ENVELOPE OF EXHIBITS IN LPS. -pb-
Dec. 19 APLTS' OPENING BRIEF DUE 1/29/79. -pb-

1979

Jan. 8 FILED TWO ADDL. COPIES VOL. I. PLDGS. -pb- $15.00 clerk's fee

Jan. 8 Sent one copy each of vol. I, Pldgs to counsel for Aplts' (Carlson) & Aple (Ferguson) -pb-

Jan. 26 Filed 25 aplt's opening briefs (1/25/79). ogm

Mar. 1 Filed motion & order (clerk) granting Aple an ext. of time to March 14, 1979 to file its brief. -db-

Mar. 19 Filed orig. & 24 aple's briefs (3/14). ogm

April 4 Filed as of 4/2, 25 aplt's reply briefs (3/30). ogm

1980

Nov. 4 Filed Aplt's Additional Citations. (11/30) -vts- (panel)

Nov. 12 ARGUED & SUBMITTED TO BROWNING, MERRILL, CJJ, O. HARRIS, DJ (W.ARK.) Add'l Cites to Records

Dec. 9 ORDERED OPINION FILED (MERRILL) & JUDG TO BE FILED & ENTD. Calendered San Fran Nov. 12, 1980

Dec. 9 Filed Opinion—AFFIRMED. (HARRIS DISSENTING)

Dec. 9 Filed & Entd Judgement. -dmf-

Dec. 23 Filed, as of Dec. 22, aplee's Bill of Costs. 12/17 -dmf-

Dec. 23 Filed, as of Dec. 22, aplts' petition for rehearing and suggestion for rehearing en banc. (active judges) -dmf-

Dec. 23 Filed, as of Dec. 22, motion (Liverance and O'Connor) for leave to file brief amicus curiae re petition for rehearing. (panel) 12/19 -dmf-

Dec. 23 Filed, as of Dec. 22, motion (Griswold, et al) for leave to file brief amicus curiae re petition for rehearing. (panel) 12/19 -dmf-

Dec. 30 Filed, as of Dec. 23, motion (Hirsh and Mering) for leave to file brief as amicus curiae and for enlargement of time for filing same. (panel) 12/22 -dmf-

1981

Feb. 18 Filed order (Browning, Merrill, Harris) The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected. The motions for leave to file briefs amici curiae are hereby denied. -dmf-

Feb. 26 Filed aplts' motion for stay of mandate pending application for certiorari. (Merrill) 2/24 -dmf-

Mar. 3 Filed Order (Merrill) motion for stay of mandate granted to March 27, 1981. -dmf-

Received SC notice of filing petition for cert on 3/25/81, SC#80-1614. pn

Filed certified copy of SC order of 6/1/81, granting cert. (copies to panel) pn

Exhibit 5-E to Stipulation of Facts entered October 25, 1977:

I, MAGARGARET WEYERHAEUSER JEWETT of Woods Hole, Barnstable County, Massachusetts, make this my last will and testament, revoking all previous wills and codicils made by me.

Clause First: I constitute and appoint my husband, JAMES R. JEWETT, and my son, GEORGE F. JEWETT, or the survivor of them, to be the executors or executor of this my will. If neither my said husband nor my said son becomes executor, or if both cease to be executors, I constitute and appoint my nephew, EDWIN W. DAVIS of Cloquet, Minnesota, to be the executor. If he does not become or ceases to be an executor, I constitute and appoint my nephew, FREDERICK K. WEYERHAEUSER of St. Paul, Minnesota, to be the executor. If he does not become or ceases to be executor, I constitute and appoint my nephew, FREDERICK WEYERHAEUSER of said St. Paul, to be the executor.

If at any time in the opinion of my executors or executor such an appointment would be desirable, I constitute and appoint as an additional executor of this will such person resident in Massachusetts as shall be nominated by the said executors or executor by a writing filed in the court in which my will is proved.

Clause Second: I constitute and appoint my said husband and my son, GEORGE F. JEWETT, and the survivor of them to be the trustees or trustee under this my will. In case both of them do not become or cease to be trustees, I constitute and appoint my daughter-in-law, MARY COOPER JEWETT, wife of my said son, to be trustee.

If at any time in the opinion of my trustee or trustees it is desirable to have an additional trustee, he or they shall nominate another trustee who shall be a resident of Massachusetts. Such nomination shall be presented to the Probate Court having jurisdiction over the trust estate to the end that such Court shall appoint the person nominated to be trustee, and upon such appointment the trust estate shall vest in the old and new trustees without further conveyance or formality.

Clause Third: I exempt each executor and each trustee and successor trustee from giving any bond or any surety on any bond, and expressly request, direct, and provide that they and each of them be so exempt.

Clause Fourth: No corporation, transfer agent, or other person dealing with any executor or trustee shall be obliged to see to the application of any money or property delivered to any executor or trustee, or to examine into the trusts upon which any property administered under my will is held, but any such corporation, transfer agent, or other person may deal with any such property and with any executors or executor or trustees or trustee as if such executor or trustee were the owner thereof free of any trust.

Clause Fifth: I direct my executors to set aside a fund consisting of all the shares of Texas Corporation which I own at the time of my death and that this stock or the proceeds thereof shall be used to pay all Massachusetts legacy, inheritance, and estate taxes.

Clause Sixth: I give and bequeath to my said husband and my said son as jointenants, and to the survivor, free of all estate, legacy, inheritance, and succession taxes, all my furniture, silver, pictures, books, clothing, papers, automobiles, and all articles of personal or household use or ornament whatsoever, hoping but not requiring that they will make such disposition of them as they think I would have wished.

Clause Seventh: I give to THE PRESIDENT AND FELLOWS OF HARVARD COLLEGE, incorporated under the laws of Massachusetts, the sum of One Hundred and Fifty Thousand Dollars ($150,000) free of all estate and inheritance taxes. This amount shall be set aside as an endowment fund and the income thereof used for the support of a professorship of Arabic in Harvard University to be known as "The James Richard Jewett Professorship of Arabic". I also give to THE PRESIDENT AND FELLOWS OF HARVARD COLLEGE a further sum of Ten

Thousand Dollars ($10,000) free of all estate and inheritance taxes. This fund shall be known as "The Jewett Fund" and shall be held by said President and Fellows or their successors and the income thereof accumulated. Whenever the accumulations of income thereon shall amount to Ten Thousand Dollars ($10,000) such accumulations shall be added to and merged with the professorship endowment fund. The original fund of Ten Thousand Dollars ($10,000) shall continue to be held upon the trust to accumulate the income and to add the accumulations to the professorship endowment fund upon each occasion when such accumulations amount to Ten Thousand Dollars ($10,000) until the value of the said endowment fund shall amount to Two Hundred Thousand Dollars ($200,000). Then, if in the opinion of the said President and Fellows the income of the endowment fund is as great or greater than an amount equal to the average salary of full professors at Harvard University, the accumulation under the above provisions shall be suspended. Such accumulation shall, however, be resumed at any time, or from time to time, if in the opinion of said President and Fellows the income of the endowment fund falls below or may be expected to fall below the above average figure for professors' salaries. While such suspension of the provisions for accumulation of the income of this fund for the endowment fund continues, four-fifths of the income of the fund and of any accumulations of income thereon may be applied to the general purposes of Harvard University and the remainder of such income shall be accumulated and added to the principal of the fund.

So far as possible either my husband or I intend to complete the gift set out in this clause during our lifetimes. Accordingly, the value of any gifts at the time of such gift made by me or my husband before my death to THE PRESIDENT AND FELLOWS OF HARVARD COLLEGE for purposes identical with or similar to the provisions of this will shall be deducted from the amount of this legacy and shall first be deducted from the portion thereof which consists of One Hundred and Fifty Thousand Dollars ($150,000).

Clause Eighth: All the rest and residue of my estate, real and personal, in which is to be included any over which I now or hereafter have power of appointment, I give, devise, bequeath, and appoint to my said husband and my said son as trustees in fee simple upon the following trusts:

A. During the life of my said husband the trustees shall pay to him quarterly, or more often in the discretion of the trustees, the net income of the trust fund.

B. Upon the death of my said husband or upon my death if he dies before me, the trustees shall divide the fund into two equal shares and shall hold said shares on separate trusts as follows:

1. During the life of my said son, the trustees shall pay to him quarterly, or more often in the discretion of the trustees, the net income of the first share.

2. On the death of my said son the trustees shall add the remaining principal and all unpaid and accrued income of the first share to the second share if said MARY COOPER JEWETT is then living.

3. During the life of said MARY COOPER JEWETT the trustees shall pay to her quarterly, or more often in the discretion of the trustees, the net income of the second share.

4. On the death of said MARY COOPER JEWETT the trustees shall add the remaining principal and all unpaid and accrued income of the second share to the first share if my said son is then living.

5. Upon the death of the survivor of my said daughter-in-law and my said son the trustees shall hold, manage and dispose of the fund, which will then consist of the combined first and second shares, as follows:

(a) They shall divide the fund into equal shares or trusts so that there shall be one share for each child of my said son then living and one share for the issue then living representing each child of my said son then dead;

(b) They shall pay each share set apart for the issue of a deceased child to such issue per stirpes;

(c) They shall pay each share set apart for a child who has reached the age of twenty-five (25) years to such child;

(d) They shall pay the net income of each share set apart for a child who is then under the age of twenty-five (25) years to such child during the term of the trust of his share. When he reaches the age of twenty-one (21) years, they shall distribute to him one-fourth of the principal of his share and all unpaid, accrued, and accumulated income thereon, and when he reaches the age of twenty-five (25) years, they shall distribute to him all of the remaining principal of his share and all unpaid, accrued, and accumulated income thereon;

(e) If any child of my said son lives to become entitled to income but dies before becoming entitled to all of the principal of his share, the trustees shall pay the principal and all unpaid, accrued, and accumulated income of such child's share to his issue living at his death per stirpes; and if no such issue is living, shall divide such share equally among his living brothers and sisters and the then living issue of deceased brothers and sisters, such issue to take the share to which their ancestor would be entitled per stirpes. The distributive share of each child for whom there is a trust fund existing under this will shall be added to the principal of such fund.

6. If at the death of my said husband, my said daughter-in-law, my said son, and myself there is no issue of my said son living, the trustees shall pay the trust fund, or the executors shall distribute the residue, as the case may be, to my nephew, EDWIN C. DAVIS of Cloquet,

Minnesota, or in case he is not living, to his issue per stirpes; and if neither he nor any of his issue is then living, to those persons who would under the statute of distributions now in force in Massachusetts be my next-of-kin if I died immediately after the survivor of my said husband, my said daughter-in-law, and my said son, or in case I survive my said husband, my said daughter-in-law, and my said son, to my next-of-kin at my death.

7. If any child of my said son lives to become entitled to the income of the share held in trust but dies before becoming entitled to principal and there are no issue of my said son living at his death, the trustees shall pay and distribute such child's share to my said nephew and if he is not living at such time, to his issue then living per stirpes; and if either he nor his issue is then living, to those persons who would under the statute of distributions now in force in Massachusetts be my next-of-kin if I died immediately after the death of such child.

8. At the expiration of twenty-one (21) years after the death of the last survivor of my said husband, my said daughter-in-law, my said son, my said son's children living at my death, and myself, the principal of which any life tenant hereunder is then entitled to receive the income shall vest in him notwithstanding provisions elsewhere in this will for its vesting at a later date and be paid over to him forthwith.

Clause Ninth: The beneficial interests are also subject to the following provisions:

A. So far as the trustee is directed to pay income or principal to any beneficiary he may make such payments directly to such beneficiary whether or not under age, may make such payments to the beneficiary's guardian or conservator, or may expend the same for his use or benefit, and he shall have power to determine what expenditures are for the use and benefit of any beneficiary.

B. So far as the trustee is directed to pay income of any share to any beneficiary, he may in his discretion accumulate said income or any part or parts thereof and retain the accumulations on a separate account, with discretionary power to pay them out at a later time or later times as if they were part of current income or to transfer them from time to time to principal.

C. All provisions in this instrument for the payment of any sum, whether principal or income, are subject to the further provision and condition that said principal or income shall be inalienable and not subject to be reached or applied by any creditor of the person entitled thereto.

Clause Tenth: I give to the executors and trustees hereunder and their successors the following powers, rights, and exemptions in addition to and not in limitation of any given otherwise in this instrument or by rules of law and make the following provisions concerning them:

A. They shall have full power to sell at public auction or private sale on such terms as they shall think proper any of my property and any property which passes by this will and any property which they may hold at any time, whether real or personal, and to invest and reinvest the proceeds at their discretion in such investments as they may deem advisable.

B. They may borrow money, sign mortgages and notes and bonds binding my estate, mortgage real estate and pledge personal property. They may lend money to any concern in which they, as such executors or trustees, hold securities, and purchase or subscribe to new securities of any kind or concern whatsoever. They may do any act which in their opinion makes any investment held by them more valuable or secure.

C. They shall have the power to hold some or all of the shares or portions of the trust fund together as a unit, or to hold any share or portion separately for the beneficiaries thereof.

D. They may carry the trust fund or any part or share or fractional share thereof in their individual names or in the name of any person or persons, natural or artificial.

E. I desire their best and prudent judgment and action, but I do not wish that they should be limited to the investments allowed by law from time to time, or otherwise limited in their actions, and I expressly provide that neither their choice of investments nor their powers of action in any matter shall be limited in any manner whatsoever so long as they exercise their own judgment and act in good faith.

F. They shall have power to compromise without leave of court any and all claims of any kind which they deem it expedient to compromise in the course of performing their duties hereunder.

G. Their determination made in good faith as to whether any sum or thing is income or principal in apportioning anything between income and capital or between persons successively entitled to the income of a trust in their hands shall be final and binding.

H. In making any division or disposition of my property as herein or in any codicil provided for, my executors or trustees may either convert the property, real and personal, into money or distribute it or any part of it in kind at such valuations as they think fair and equitable, and in the event of a partial division or disposition of the property, real and personal, may adjust any balance or balances in cash. They may appoint in writing to any or every legatee or beneficiary named in this will such portion or portions of my estate as they in their discretion

think best and as shall in their opinion equal the amount to which said legatee or beneficiary is entitled. The exercise of such power in favor of any legatee or beneficiary shall be a satisfaction of his or her legacy, and this power shall extend to both my real and personal estate.

I. They shall not be personally liable for their action or non-action except for bad faith.

J. Whenever in this will or any codicil I give powers, authority, discretion, protection, or exemption from sureties to, or make provisions concerning, my executor or any trustee hereunder, I hereby extend all such gifts and provisions to any other person holding either office, whether named or not, and to any administrator, or successor trustee.

Clause Eleventh: My executors or trustees may at any time in their discretion pay or satisfy out of the principal of the residue or out of the principal of any trust fund on any terms that seem reasonable to them any of such taxes or duties on any future interest or on any interest which the law may permit to be paid or satisfied at that time although this amount be not then due and payable and whether such future interest may at that time be vested or contingent.

Signed, sealed, published and declared as and for her last will and testament by the above named Margaret Weyerhaeuser Jewett known to us to be such in the presence of us who at her request in her presence and in the presence of each other do attest and subscribe the same as witnesses on the day and year written above her signature.

1. Daniel L. Brown
2. Mary A. Casey
   5 Maine Terrace, Somerville
3. Mary C. O'Leary
   73 Litchfield St., Brighton

In Witness Whereof I do hereto set my hand and seal in the presence of three credible witnesses publish and declare this instrument written on fourteen (14) numbered sheets, one side only of each being used, and each sheet except the last having been initialled by me at the bottom, to be my last will and testament this 18th day of October 1934.

Margaret Weyerhaeuser Jewett (L.S.)

A true copy. Attest: (s) Kenrick A. Sparrow, Register

Exhibit 6-F to Stipulation of Facts entered October 25, 1977:

ESTATE OF MARGARET WEYERHAEUSER JEWETT

GEORGE F. JEWETT, JR. DISCLAIMER

WHEREAS, MARGARET WEYERHAEUSER JEWETT, late of Falmouth, County of Barnstable, Commonwealth of Massachusetts, died on January 14, 1939, leaving a will which was proved and allowed by the Probate Court of said County on February 14, 1939, and

WHEREAS, CLAUSE EIGHTH of said will created a trust for the benefit of her husband, JAMES R. JEWETT, during his lifetime and thereafter for the benefit of her daughter-in-law, MARY C. JEWETT (now MARY C. GAISER), and her son, GEORGE F. JEWETT (now deceased), and

WHEREAS, discretionary payments of income are now being made to MARY C. GAISER pursuant to the provisions of Subparagraph 3 of Paragraph B of said CLAUSE EIGHTH by the Trustees of the aforesaid, and

WHEREAS, the undersigned, as a son of MARY C. GAISER and the late GEORGE F. JEWETT, has an interest in fifty percent (50%) of the trust estate, including accumulations of income transferred to principal under the provisions of Paragraph B of CLAUSE NINTH provided that he survives said MARY C. GAISER, and

WHEREAS, the undersigned wishes to renounce his right to receive ninety-five percent (95%) of the aforesaid fifty percent (50%) of the remainder of the trust estate upon the death of MARY C. GAISER (but not including the right to receive fifty percent (50%) of the accumulations of income, if any there be, occurring after the execution of this disclaimer).

NOW, THEREFORE, the undersigned, said GEORGE F. JEWETT, JR., hereby irrevocably renounces and disclaims his right, if any, to ninety-five percent (95%) of the aforesaid fifty percent (50%) of the trust estate upon termination, provided,

however, that this disclaimer shall not act upon any interest he may have in any accumulations of income which may occur after the date set forth below.

IN WITNESS WHEREOF said GEORGE F. JEWETT, JR. has hereunto set his hand and seal, in triplicate, this 30th day of August, 1972.

(s) George F. Jewett, Jr.

STATE OF CALIFORNIA
San Francisco, ss. August 30, 1972

Then personally appeared before me the above-named GEORGE F. JEWETT, JR. and acknowledged the foregoing to be his free act and deed.

(s) LOUIS J. OLIVERO
Notary Public
My Commission Expires:

(SEAL)
OFFICIAL SEAL
LOUIS J. OLIVERO
NOTARY PUBLIC—CALIFORNIA
City & County of San Francisco
My Commission Expires Sept. 30, 1973

Exhibit 7-G to Stipulation of Facts entered October 25, 1977:

ESTATE OF MARGARET WEYERHAEUSER JEWETT

GEORGE F. JEWETT, JR. DISCLAIMER #2

WHEREAS, MARGARET WEYERHAEUSER JEWETT, late of Falmouth, County of Barnstable, Commonwealth of Massachusetts, died on January 14, 1939, leaving a will which was proved and allowed by the Probate Court of said County on February 14, 1939, and

WHEREAS, CLAUSE EIGHTH of said will created a trust for the benefit of her husband, JAMES R. JEWETT, during his lifetime and thereafter for the benefit of her daughter-in-law, MARY C. JEWETT (now MARY C. GAISER), and her son, GEORGE F. JEWETT (now deceased), and

WHEREAS, discretionary payments of income are now being made to MARY C. GAISER pursuant to the provisions of Subparagraph 3 of Paragraph B of said CLAUSE EIGHTH by the Trustees of the aforesaid, and

WHEREAS, the undersigned, as a son of MARY C. GAISER and the late GEORGE F. JEWETT, has an interest in fifty percent (50%) of the trust estate, including accumulations of income transferred to principal under the provisions of Paragraph B of CLAUSE NINTH provided that he survives the said MARY C. GAISER, and

WHEREAS, on August 30, 1972, the undersigned executed a disclaimer renouncing his right to receive ninety-five percent (95%) of the aforesaid fifty percent (50%) of the remainder of the trust estate upon the death of MARY C. GAISER (but not including the right to receive fifty percent (50%) of the accumulations of income, if any there be, occurring after the execution of this disclaimer), and

WHEREAS, the undersigned wishes to renounce his right to receive the remaining five percent (5%) of the aforesaid fifty

percent (50%) of the remainder of the trust estate upon the death of MARY C. GAISER (but not including the right to receive fifty percent (50%) of the accumulations of income, if any there be, occurring after the execution of this disclaimer).

NOW, THEREFORE, the undersigned, said GEORGE F. JEWETT, JR., hereby irrevocably renounces and disclaims his right, if any, to the remaining five percent (5%) of the aforesaid fifty percent (50%) of the trust estate upon termination, provided, however, that this disclaimer shall not act upon any interest he may have in any accumulations of income which may occur after the date set forth below.

IN WITNESS WHEREOF said GEORGE F. JEWETT, JR. has hereunto set his hand and seal, in triplicate, this 14th day of December, 1972.

(s) GEORGE F. JEWETT, JR.

STATE OF CALIFORNIA
County of San Francisco, ss. December 14, 1972

Then personally appeared before me the above-named GEORGE F. JEWETT, JR. and acknowledged the foregoing to be his free act and deed.

(s) LOUIS J. OLIVERO
Notary Public
My Commission Expires:

OFFICIAL SEAL
LOUIS J. OLIVERO
(SEAL) NOTARY PUBLIC—CALIFORNIA
City & County of San Francisco
My Commission Expires Sept. 30, 1973